LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF SPECIAL OPERATIONS • SPECIAL INVESTIGATIONS DIVISION

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August 2, 1995

Captain Daniel L. Burt
Los Angeles County Sheriff's Department
Homicide Bureau
4700 Ramona Boulevard
Monterey Park, California 91754-2169

Dear Captain Burt:

Re: S.I.D. File Number 100-7949/95-0115
Los Angeles County Sheriff Department Number 095-05067-0272-051

The Special Investigations Division of the Los Angeles County District Attorney's Office has concluded its independent investigation and review of the April 2, 1995 fatal shooting of Santiago Garcia, age 18, by Los Angeles County Sheriff's Deputies John Roberts and Raymond Duffy. Senior Investigator [redacted] and Deputy District Attorney Richard Goul responded to the scene of the shooting in the 9500 block of North Gifford Avenue immediately after our office was notified. We have interviewed known percipient witnesses and reviewed the autopsy report and Sheriff's Department homicide investigative reports received by our office on May 23, 1995. We conclude that there is insufficient evidence to prove beyond a reasonable doubt that a crime has been committed.

SUMMARY OF FACTS

On April 2, 1995, at approximately 5:17 p.m., Los Angeles County Sheriff's Deputies Raymond Duffy and John Roberts responded to a radio call that a man had a gun at

Criminal Courts Building
210 West Temple Street
Los Angeles, CA 90012-3275

City Terrace Park, Hazard Avenue and Snow Drive in East Los Angeles.

[redacted], in an April 2, 1995, taped interview with Senior Investigator [redacted] and the undersigned, stated that he and his family were having a picnic after playing softball at City Terrace Park when he observed Santiago Garcia get out of a car. [redacted] stated that Garcia, who was carrying a basketball, reached into his trousers and pulled out a .45 caliber pearl-handled handgun. [redacted] watched as Garcia put a magazine clip in the bottom of the gun, then put the gun in the front crotch area of his pants. Someone in the party said, "He has a gun." Garcia looked in their direction, then walked away. [redacted]'s brother, [redacted], called "9-1-1" with his cellular telephone, describing Garcia as carrying a gun while wearing a blue baseball cap on backward, and white tank-top shirt. [redacted] gathered his family together inside the gym. When he next looked outside, he saw a Sheriff's car and pointed out Garcia to the deputies. Garcia started to run with his basketball in his left hand and gun in his right hand.

Deputy Duffy, in an April 2, 1995, non-compelled taped interview with Sheriff investigators, stated that he was riding in the front passenger seat as Deputy Roberts drove to City Terrace Park in response to the call. At the park, witnesses told the deputies that a male, wearing a baseball cap and carrying a basketball, was running through the park with a gun. Deputy Duffy observed Garcia running eastbound onto Vanpelt Drive, and the deputies followed in their radio car. As the deputies drove through the park, other citizens pointed in the direction of Garcia. As they started south on Vanpelt, they lost sight of Garcia. They stopped and asked civilians on a front porch if they had seen a man running with a basketball. The civilians pointed eastbound on Purcell Street. The deputies drove on and Duffy saw Garcia running on Purcell as it merged with Gifford Avenue. Garcia continued to run, looking back periodically over his shoulder, as the radio car approached.

"We stopped the car. . . and I bailed out the passenger side and I've drawn my gun being that it was a 417 call and yell out at the top of my lungs, 'Freeze! Police! Just stop where you are!' He at that point is switching the basketball from his right hand over to his left hand and as he's doing so, he's turning around and facing back towards us," said Deputy Duffy. "As he is turning, I noticed that his right hand has gone down to his waist and I don't know whether at that point he was holding the ball or using the ball to conceal whatever it was he had in his waistband, but when he turns all the way around, I noticed that he's got something in his hand and it appears to be a gun to me.

"At that point, he takes a step towards my partner's side of the car and is raising the gun up towards him. . . . At that point, I hear a round being fired. I don't know whether it was him that fired a round, so I fired a round believing I struck him in

the chest and then I ducked down for concealment and cover and I hear about five more rounds go off. I pop back up to engage again, however, the suspect was gone out of my view now. . . . I came around the car saw him laying on the side of the road. He was bleeding," said Deputy Duffy, who observed what appeared to be a handgun on the ground between Garcia and the driver's door of the radio car.

Deputy John Roberts, in an April 2, 1995, non-compelled taped interview with Sheriff investigators, gave essentially the same account.

Deputy Roberts stated that when he stopped the car and got out the driver's door, "[Garcia] turns and when he turns I believe he turns to his left and now he's facing directly towards me. I'm watching his hands. . . . I see what I believe to be a stainless steel semi-auto in his waistband. . . . He turns, he goes directly with his right hand, I see it coming around in a gripping motion, pulls on it, gets a grip on it, pulls it right up and out and he pulls it up and out right then and there I fear for my life and my partner's life without a doubt and I was shocked."

Deputy Roberts stated that, "My partner was yelling at him 'Stop!'. . . . My partner had been yelling the whole time for quite a while. As we're driving up, as we pull up. . . . When [Garcia] got the pistol out, I began to fire in rapid succession. . . . I know in my mind that he's got a gun. I see the gun; it's in his hands coming at me. He's looking at me and. . . my objective is to go ahead and put rounds down range and to stop his assault of killing me or killing my partner . . . . I fired, I thought, six, seven rounds."

Deputy Roberts stated that he fired continuously -- including as Garcia fell to the ground -- because "I believe he had the gun the whole time. . . . You are attempting to stop the person who is moving, who is not stopped, who is still a threat and when I felt the threat was over and my life was no longer in danger, I stopped firing."

In taped interviews with Senior Investigator [redacted], several local residents stated that they viewed the shooting. All of the residents interviewed saw the shooting from a distance of at least 100 yards and from elevations that obscured their observations.

[redacted] stated that he was painting a house at [redacted] when he saw the Sheriff's car arrive. The deputies got out of the car and said something to Garcia. [redacted], who could only see the back of Garcia's head and not his hands or the rest of his body, said that the deputies shot Garcia.

[redacted] stated that she was inside her house when she heard five

gunshots, then left the house, went to her back yard, and looked down the hill to the street and saw a deputy fire one more shot at Garcia, who was on the ground. Garcia had his left hand under his torso and right hand in the air when the final shot was fired. [redacted] saw no gun in Garcia's hand.

[redacted] said that he saw the Sheriff's vehicle pull up behind Garcia, who was carrying a basketball. Both deputies got out of the car and said to Garcia, 'Don't move!' Both deputies fired at Garcia, who fell to the ground. The deputies continued to yell at Garcia, then fired one final shot. [redacted] said that only Garcia's back was in view during the shooting and that he could not see Garcia's hands. [redacted] stated that the deputies fired seven shots, Garcia fell, and the deputies fired three more shots. [redacted] did not see anything in Garcia's hands.

[redacted], in a statement to Senior Investigator [redacted] and the undersigned, stated that [redacted] had been carrying around a butane lighter which looked like a chrome semi-automatic handgun. He said that he warned [redacted] not to carry the gun replica.

After the shooting, Sheriff investigators, Senior Investigator [redacted], and the undersigned examined the object that was recovered next to Garcia, and found it to be a butane lighter gun replica. (See photo attached.) It was noted that the Sheriff's vehicle was parked near the top of a hill, and that the deputies would have been shooting in a downward direction when they fired at Garcia.

Sheriff criminalist James Roberts (no relation) determined that six discharged cartridge cases, and four recovered bullets, had been fired by Deputy Duffy's Beretta pistol, and one recovered bullet had been fired by Deputy Roberts' Beretta pistol.

Los Angeles County Department of Coroner Deputy Medical Examiner Vladimir Levicky, M.D. conducted the autopsy on April 6, 1995. Dr. Levicky ascribed the cause of death to eight gunshot wounds. The bullet entrance wounds were enumerated as follows: above the right ear with a level trajectory, right chest with a slightly (5 degree) downward trajectory, left chest with a slightly downward (5 degree) trajectory , left upper arm with a slightly downward (5 degree) trajectory, right abdominal wall with an upward (10 degree) trajectory, left abdominal wall with an upward (5 degree) trajectory, lower abdominal wall with upward (5 degree) trajectory, and left forearm with an upward (10 degree) trajectory. There was no soot or gunpowder indicating gun fire from an extremely close distance.

LEGAL ANALYSIS

The Supreme Court clarified the standard that must be used in evaluating an officer's conduct in Graham v. Connor (1989) 490 U.S. 386 at 396-397:

> The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . . The calculus of reasonableness must embody the fact that police officers are often forced to make split-second judgements in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.

California law permits the use of deadly force in one's self-defense or in the defense of another if it reasonably appears to the person claiming the right of self-defense that he actually and reasonably believed that there was imminent danger of great bodily injury or death. People v. Williams (1977) 75 Cal. App. 3d 731

The test for self-defense is stated in CALJIC 5.30:

> It is lawful for a person who is being assaulted to defend himself from attack if, as a reasonable person, he has grounds for believing and does believe that bodily injury is about to be inflicted upon him. In doing so, such person may use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent.

In the present case, there is insufficient evidence to prove that the deputies were not justified in shooting at Garcia under the self-defense doctrine, notwithstanding the fact that Garcia brandished not an operable gun, but a gun replica.

CALJIC 5.51 provides:

> Actual danger is not necessary to justify self-defense. If one is confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest conviction and fear that he is about to suffer bodily injury, and if a reasonable person in a like situation, seeing and knowing the same facts, would be justified in believing himself in like danger, and if that individual so confronted acts in self-defense upon such appearances and from such fear and honest convictions, such person's right to self-defense is the same whether such danger is real or apparent.

CONCLUSION

We conclude that there is insufficient evidence to prove beyond a reasonable doubt that the deputies did not act in self-defense. The eyewitness accounts that Garcia brandished a weapon at the park, along with his [redacted]'s assertion that Garcia was armed with a gun replica, and the recovery of that gun replica, corroborate a critical component of the deputies' account. The failure of the witnesses to observe Garcia with a gun is not sufficient evidence upon which to base criminal charges, especially since those witnesses were a significant distance away from the incident and their observations were obscured. We, therefore, are terminating this investigation and consider this case closed.

Very truly yours,

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District Attorney

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By Richard Goul
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cc: Deputy John Roberts, Serial #[redacted]
Deputy Raymond Duffy, Serial #[redacted]